

## Texas Family Law FE

The requirements for a valid ceremonial marriage are: (1) A reasonable appearance of authority; (2) At least one party acting in good faith; (3) A valid marriage license is not required, but; (4) If there is no license the marriage must be established by proof.

Common Law Marriage: To Establish an informal marriage it must be shown that: (1) The parties agreed to be married; (2) Lived together as husband and wife (cohabitation); (3) held themselves out to others that they were married.

An already established informal marriage can be proved by: (1) executing and recording a sworn "Declaration of informal marriage"; (2) Containing an attestation that both parties are over eighteen; (3) Neither is already married; and, (4) the applicants are not related within the prohibited degree of consanguinity.

Void Marriages arise in two circumstances: (1) Consanguinity (marriage of brother, sister, aunt, uncle, niece, or nephew and includes half-bloods; (2) Bigamy (when the other marriage is dissolved, the current marriage becomes valid by operation of law. children of void marriages are marital children for all legal purposes).

Voidable Marriages: (1) Underage, if the child is married without consent, a suit may be brought to annul the marriage. The marriage is voidable at the discretion of the court (which may find it in the minor's best interest, such as if woman is pregnant); (2) Alcohol, narcotics, permanent impotency, fraud, duress, and force- if present at the time of the marriage then voidable; (3) Mental incapacity-which may be brought by either party; (4) Concealed divorce within 30 days of marriage- If the petitioner did not know, and a reasonable person would have known, it must be brought within 1 year, and they cannot cohabit after it is discovered; (5) Marriage less than 72 hours after issuance of license- if brought within 30 days. In all but minor and 72 hour rule, a party cannot annul if they voluntarily cohabitated after the situation was discovered.

Powers and duties arising from marriage: (1) Power and capacity given regardless of age to all who are married; (2) Duty of support-each spouse has a duty to support the other spouse and her minor children; (3) Each spouse is personally liable for contracts for necessities.

Grounds for no fault divorce and defenses thereto: (1) No fault divorce will be granted upon the ground that a marriage has become unsupportable; (2) The only defense is a reasonable expectation of reconciliation.

The grounds for fault based divorce: (1) Adultery; (2) Cruel Treatment; (3) Abandonment for more than one year; (4) Living apart for at least three years; (5) Confinement in a mental hospital for at least three years; and, (6) conviction of a felony with at least 1 year imprisonment. Note that the only defense is a denial of the grounds.

Spousal recovery of damages in divorce: A spouse can recover for: (1) Intentional infliction of emotional distress; (2) In dividing community estate, fault can be considered (6 grounds above), but a spouse cannot recover both a disproportionate share of the estate and tort damages based on the same conduct; (3) There is no independent cause of action in tort for damages to the community estate.

Powers of the court to determine if there is reasonable expectation of reconciliation: Court can order the parties to: (1) Submit to counseling to determine if there is a reasonable expectation of reconciliation; (2) Can order additional counseling for an additional 60 days if: (a) court believes that there is a reasonable expectation of reconciliation; (b) Counselor will submit a report to the court giving his or her opinion as to the prospects of reconciliation.

Standing requirements for Divorce in Texas: (1) Petitioner needs to have domiciled in Texas for the last 6 months; (2) In the particular county for at least 90 days; (3) Non-resident may petition in county of appropriate venue for their spouse who meets residency requirements; (4) Court does not need personal jurisdiction over both parties to grant a divorce.

Requirements for a suit for annulment or to declare marriage void: (1) actions may only be maintained if parties were married in Texas; or, (2) either party is a domiciliary of Texas.

Requirements for long arm jurisdiction over non-resident spouse: Court has personal jurisdiction over the defendant if: (1) Texas is the last marital residence of the spouses; and (2) The suit is commenced within 2 years after the date on which the marital residence ended; or, (3) any basis that doesn't offend the state or federal constitutions.

Pleadings for a divorce or annulment suit to declare a marriage void must contain: (1) Allegations of the grounds relied on substantially in the language of the statute; and, (2) must not contain detailed statement of evidentiary facts; (3) Petition must state whether a protective order for domestic violence is pending or in effect.

Dissolution of marriage petition with minor children from the marriage must be accompanied by: a separate suit affecting the parent child relationship or SAPCR.

Restrictions on transfers or debts while divorce is pending: (1) After petition for divorce a transfer of community property or incurrance of community obligation is void with respect to the other spouse if; (a) there is an intent to injure the rights of the other spouse; (b) But is not void with respect to third parties if they have no notice; (d) Notice to third parties can be given by filing a lis pendens.

Divorce Jury Trials: Allowed, but the findings are only advisory on all issues except child custody.

Waiting Period for Divorce: 60 days, but a decree entered in a shorter time period is not subject to collateral attack.

Informal Procedure for uncontested divorce: (1) Parties agree to use collaborative law procedures or mediation; (2) parties and attorneys agree in writing to use their best efforts, and make good faith attempt to resolve the dispute without judicial intervention; (2) court must approve the agreement; (3) Attorneys must agree that if parties fail to settle, attorneys will withdraw from the case and will not serve as litigation counsel; (4) Status report filed with the court after 180 days, and 1 year, after 2 years the case is dismissed or set for trial; (5) In mediation agreement is binding if it so states; (a) is signed by both parties; (b) and attorneys if present; (c) mediated settlement that meets these requirements is entitled to judgment on the agreement.

Temporary Restraining Order can be used for: (1) granted ex parte when there are unreasonable acts of the sort that no reasonable person could think he or she could commit e.g.: (a) vulgar telephone calls with intent to annoy and alarm; (b) threats of bodily injury; (c) falsifying records; (d) removing or concealing transferring of property; (2) A temporary restraining order cannot be granted for acts that are

reasonable.

Temporary injunction can be used for: (1) After notice and hearing court issues temporary injunction barring unreasonable acts and reasonable acts; (2) that the person could ordinarily do; (3) temporary injunction can award one spouse exclusive use of the residence; (4) Order payment of temporary support and attorney's fees; (5) require a sworn inventory or require the production of the books from a family business.

Temporary protective order can be issued: (1) ex parte if the court finds clear and present danger that spouse will commit family violence again; (2) Temporary Protective order is valid for 20 days; (a) can be extended for additional 20 days; (3) Temporary Protective Order can evict a spouse from the family home; (a) If spouse files a sworn affidavit giving description of the facts supporting the temporary protective order; and, (b) spouse appears in person to testify.

Presumption of paternity: A man is presumed to be the father of a child if: (1) The child is born during the marriage of the man and mother; or Within 300 days after the marriage is terminated; or, (2) the man married the child's mother father the child's birth; and (a) he voluntarily asserted his paternity by filing a record with the bureau of vital statistics; (b) Agreed to be named on the child's birth certificate; or, (c) Promised in a record to support the child as his own.

Courts can prevent genetic testing through paternity by estoppel: (1) The court may issue an order denying genetic testing and adjudicating the presumed father to be the father of the child if the court determines that the conduct of the mother or father estops that party from denying parentage, and it would be inequitable and against the best interest of the child to disprove the father-child relationship.

Genetic Testing has to show in order to establish paternity the following: (1) must establish at least a 99% probability that the man is the father; (2) Based on a paternity index of at least 100 to 1.

Parental liability for torts committed by child: (1) Parent is liable with no dollar limit for property damage caused by a child's negligent conduct if: (a) reasonably attributable to negligent failure to exercise parental control or discipline; (2) Parent is liable for willful or malicious conduct of a child age 12 or older; (a) liability is limited to \$25,000 per act

plus court costs and attorney's fees; (3) Parent liable for actual damages up to \$5,000, plus court costs and attorneys' fees for any theft committed by the child.

3rd party challenge to presumption of paternity: Third party must file an action within four years and submit to genetic testing.

Back Child Support: Court can order payment of child support retroactively from child's birth. There is a statutory presumption that retroactive support for: (1) Previous 4 years is reasonable; and (2) is in the child's best interest; (3) Presumption can be rebutted by showing: (a) That the man knew or should have known that he was the father; and, (b) sought to avoid establishment of a support obligation.

Child may be adopted when: (1) both parents have died; (2) The parent-child relationship as to each living parent has been terminated; (3) In second marriage situation; (4) Adoption by former stepparent; (5) All adoptions are subject to best interest of the child test.

Former Stepparent adoption requirements: (1) Child is at least 2 years old; (2) Parent-child relationship has been terminated with respect to one parent; and, (3) Adopting former stepparent has been child's managing conservator or has had actual care, possession, and control of the child for at least six months if: (a) non-terminated parent consents; or, (b) one year if the non-terminated parent does not consent; (4) Can adopt the child if it is in best interests of the child.

Infant adoption procedure: (1) Petition to terminate parent child relationship is filed; (2) Affidavit of status of the child is signed by the mother after first trimester; (3) Affidavit of relinquishment of parental rights is signed by the mother; (4) Affidavit of waiver of interest in the child is signed by the father.

alleged father's rights with respect to proposed adoption: (1) right to bring paternity suit; (2) If father refuses to sign affidavit, his rights can be involuntarily terminated upon a showing: (a) That he did not respond to the process after being served; (b) failed to file with the paternity registry within 30 days after the child's birth; (c) or by proof of culpable acts that are grounds for termination of the parent child relationship, such as abandonment during pregnancy.

Grounds for involuntary termination of parent child relationship: (1) Abandonment; (2) abuse; (3) Neglect; (4) Imprisonment for over 2 years; (5) culpable acts toward the child or another child; (6) failure to support the child for one year; (7) Use of a controlled substance, per statutory test: (a) Best interest of the child; (b) by clear and convincing evidence.

Prerequisite forms before adoption finalization: (1) pre-adoption screening; (2) post placement adoption report; (3) report showing adopting parent's criminal history; and, (4) Social, health, education, and genetic history or sheg report including; (a) report of any history of abuse suffered by the child.

Factors court considers in appointing managing conservator: Statutory: (1) best interests of the child test; (2) No discrimination based on gender or marital status; (3) evidence of past domestic violence; (4) evidence of false report of child abuse.

Common Law: (1) Desires of the child; (2) Child's physical and emotional needs; (3) Parental ability; (4) Stability of the home environment; (5) Parent's plans and opportunities for the child; (6) acts and omissions showing one parent is less-fit than the other; (7) either party can request jury determination which is: (a) binding on the court; (8) Split custody is allowable but strong preference to keep children together.

Court allows Joint Managing conservatorship when: (1) Court finds it is in best interest of the child (statutory presumption); and, (2) child's: (a) Physical, (b) emotional, or (c) psychological needs will benefits; (3) Parents have shown an ability to reach shared decisions; (4) both parents participated in child rearing.

Major aspects of joint managing conservatorship: (1) Exclusive power to make certain decisions are given to one JMC (Primary JMC); (2) JMC does not require equal or nearly equal physical possession of the child; (3) Court order must establish: (a) child's residence, or (b) designate which JMC has exclusive right to determine such, (c) include provisions to minimize the disruption of the child's schooling and daily routine as well as association with friends, and, (d) set out rights and duties to be exercised solely by one JMC and those decisions to be exercised jointly; (4) One party can be ordered to pay child-support.

Awarding Visitation: (1) standard possession order unless: (a) parties agree otherwise; (b) if parents live within 100 miles non-custodial parent gets one evening per week, every other weekend, and 30 days in summer; (c) non-custodial parent must pay for travel expenses related to visitation if they have the resources to do so.

Scope of child-support obligation: Court ordered child support must terminate upon the child reaching 18 or graduating high-school whichever is later. It also terminates upon the child's marriage or the obligor's death; but the court can order payment from the estate. Obligor parent must be ordered to provide health insurance.

Remedies available for enforcement of child support: (1) mandatory withholding from wages; (2) All final orders for child support must provide for mandatory withholding; (3) Maximum amount is 50% of take-home pay; (a) if obligor is self-employed he can be required to post bond; (4) Other remedies include; (a) Suspension of license; (b) child-support lien for arrearages; (c) levy and execution of financial assets; (d) Contempt of court; (e) Monetary judgment+ 6% interest.

Texas child support order will be enforced outside of Texas under the Uniform Interstate Family Support Act or UIFSA if a Party: (1) Sends two copies of the support order; (a) one certified to the foreign court; (b) together with a sworn statement of the party showing the name and address of the obligor if known the address of the employer as well; (2) Upon registration, the order becomes an order from the state and will be enforceable by traditional means; (3) A party could also reduce arrearages to judgment and it will be enforceable under full faith and credit; (4) Party can also mail obligor's employer a copy of the income withholding order; (a) automatically triggers withholding unless obligor contests the validity of the order; (5) Also try their attorney general child support division.

Remedies available to enforce child custody order: (1) Habeus corpus; (2) Tortious liability for interference with child custody; (3) criminal liability; (4) Contempt of court; or (5) Bond or security.

Habeus action entails: (1) sole issue whether there was a valid court order awarding custody; (2) other parent cannot counterclaim for reconsideration of custody; (3) Exceptions: (a) whether custody order complied with due process; (b) temporary

order can be issued if there is a serious immediate question concerning child's welfare; (c) Court may consider cross motion for custody if the child has not been in the relator's possession at any time within the past six months.

Habeas action can be brought without a prior court award of custody when: (1) a non-parent is withholding custody of the child.

Grounds for interference with child custody: (1) available against non custodial parent who kidnaps the child; or (2) withholds in violation of a visitation order; (3) Can also be brought against third parties who aid and abet including an attorney; (4) Allows for actual and punitive damages; (5) Must give notice by registered or certified mail of intent to file tort suit in 30 days unless custody order is complied with.

Jurisdiction over child custody dispute involving parties from multiple states: Under Uniform Child Custody Jurisdiction and Enforcement Act or UCCJEA the primary test is home-state jurisdiction which: (1) child's home state, or; (2) state in which child has lived for at least 6 consecutive months; But if (3) There is a court having made an initial child custody order that court has exclusive continuing jurisdiction until; (a) court determines that they don't have jurisdiction any more; (4) when home state rule does not apply a state can take jurisdiction if no other state accepts jurisdiction and there is a significant connection and substantial evidence in the state.

A foreign state's custody order will be enforced in Texas under UCCJEA: (1) the order registered in Texas and enforced in same manner as a Texas order; (2) expedited enforcement in Habeas type proceedings; (3) Court can issue warrant to take immediate possession of the child on finding that child imminently likely to suffer serious physical harm or be removed from the state.

Child support order can be modified by: (1) motion to modify support order filed in SAPCR court; (2) Motion must state that circumstances of the child or affected party have materially and substantially changed, or that 3 years have elapsed since the order was entered or last modified, and that the amount of support differs from the statutory guidelines by; either, (a) 20% or (b) \$100; (3) parents cannot agree to modify or settle a claim for arrearages without court approval.

Grandparent court ordered visitation: (1) Grand parent can file grandparent's petition for reasonable access; (2) generally



either the child has lived with the grandparents for 6 months or the child's parent is unavailable; But (3) grandparent's rights statute is unconstitutional.

Professionals must do the following if suspected child abuse: (1) report the information within 48 hours; (2) duty cannot be delegated; (3) Identity of person making report is confidential, and a person who in good faith reports the abuse or neglect cannot be liable civilly or criminally; (4) Failure to report is a misdemeanor.

If state suspects child abuse: (1) Texas department of protective and regulatory services (TDPRS) can take possession of a child without a court order upon information that would lead a person of ordinary prudence and caution to believe that the child was victim of child abuse or sexual abuse; (2) Ex parte hearing must be within 3 days and parents must be given notice; (4) To retain the child TDPRS must present sufficient evidence to show a continuing danger and a reasonable likelihood that the child will be the victim of abuse in the future.

5 Types of Separate Property: (1) Property owned before the marriage; (2) Acquired during marriage by gift; (3) Partitioned community property; (4) Property acquired with separate funds; (5) Tort recovery for personal injury but not medical expenses or loss of earning potential.

Community Property: (1) Property other than separate property acquired during marriage; (2) Income from separate property unless the spouses agree in writing that the income will be separate; (3) Income from gift property of one spouse to the other; or (4) income from partitioned community property.

Status of property is determined when: at the time the asset is acquired. This rule is known as the inception of title rule and applies to all assets except employee retirement benefits.

Community Presumption: Presumes that all assets acquired during marriage are community property. All assets acquired on credit during the marriage are presumed to be acquired on community credit. All assets on hand when the issue is raised is presumed to be community property. The burden of proving property is separate is on the proponent by clear and convincing evidence.

If community funds are spent on separate property or separate funds are spent on community Property: A claim for economic contribution arises at the termination of marriage. A multiplier

is figured by dividing the amount of contribution by the equity on the date of first contribution plus all contributions and is multiplied by the equity of the date of termination of marriage:  $(\text{Contributions} / \text{Equity} + \text{Contributions} * \text{Equity} = \text{Claim})$ .

Status of property adversely possessed, beginning before marriage and finishing during marriage: If the spouse was a naked trespasser, the property is community. If the spouse entered under a rightful claim, the property is separate.

Effect of title being taken only in one spouse's name: (1) In common law states the person that takes title is the owner; (2) In community property states the title does not determine characterization; (3) Rather inception rule applies thus it is the time and circumstances of the acquisition; (4) Exception is when one spouse, using separate property, takes title to an asset in the other spouse's name. The presumption in that situation is that a gift was intended.

Employee retirement benefit plans: (1) benefits accumulated during marriage are community property; (2) Defined contribution plans just subtract the value on the day of marriage from current value; (3) A deceased spouse has no interest in retirement benefits.

Business increases during marriage: For business owned before marriage, the increases allow a reimbursement claim if the spouse spent more time than he was fairly compensated for and more than necessary to preserve the separate estate.

Division of Property upon Divorce: Court will effect a just and right division of community property. The court may consider the: (1) Age and physical condition of the parties; (2) Ability and earning power of the parties; (3) needs for future support; (4) Size of the estate; (5) Benefit spouse would have received from continuation of marriage; and (6) fault (reviewed on a manifestly unjust standard).

Property discovered after a divorce is settled: later discovered community property is subject to a just and right distribution in a separate action. The statute of limitation is two years from the point the other party repudiated the claim of community property ownership.

commingled bank accounts: Community funds are presumed to be withdrawn first. Thus, the lowest intermediate balance will be considered separate property.

Spousal Maintenance can be ordered: (1) If a couple is married at least 10 years; and (2) one spouse lacks sufficient property to provide for her minimum needs; (3) the spouse seeking support must be unable to support herself because of a disability; (4) be a custodian of a disabled child; or (5) Lack employment skills adequate to provide for her minimum reasonable needs.

Maximum monetary award for spousal maintenance: (1) \$2,500 per month; or (2) 20% of spouses average monthly income; (3) No more than 36 months unless the spouse is disabled.

Property of a bigamous marriage: (1) If the spouse is unaware of the bigamous marriage, she is called a putative spouse and the relationship is characterized as a partnership; (2) If the spouse is aware of preexisting marriage, the relationship is characterized as a meretricious relationship and the spouse gets nothing.

Requirements for a premarital agreement that would alter the character of community assets: (1) must be in writing; (2) signed by both parties; (3) no consideration is required; (4) parties may agree that separate property remains separate property; (5) agreement can govern the disposition of property upon separation, divorce, or death; (6) Agreement cannot agree that premarital property becomes community property after marriage; (7) Cannot limit obligation to provide child support.

Premarital agreement can be set aside: By proving that it was not signed voluntarily, or unconscionable when made and there was no fair disclosure of spouses property or obligations.

Premarital separate property can be converted to community property: (1) Spouses can agree; (2) In writing to convert separate property to Community property; (3) Spouses can also agree to convert Community property to Separate property and can even partition unequally.

Survivorship agreements are valid for disposition of community property: (1) agreement must be in writing; (2) signed by both spouses; (3) either spouse can revoke with written notice to the other; and (4) Court order will be needed to adjudicate the agreement valid (clear title).

Power of spouse to challenge community property gift of other spouse: One spouse can make reasonable gifts of community property as long as such gifts are not so disproportionate as to

be in fraud of the spouse's community rights.

What effect does divorce have on preexisting creditors: (1) divorce does not affect the rights of preexisting creditors; (2) If only one party is personally liable because the other didn't sign, creditor can go after community property in an in rem suit seeking to have a constructive trust placed on the property.

Liability for torts committed by one spouse: All community property is subject to judgment for torts committed during marriage. Only sole or joint management community property is available to satisfy a premarital tort.

Liability of one spouse for contracts entered into by the other: Each spouse has a duty to support the other spouse and his or her minor children. Each spouse is personally liable for the other spouse's contracts for necessities. Other contracts where the other spouse is not personally liable, creditors can only reach the liable spouse's property subject to his or her control.

A protective order can be granted upon a showing that: (1) the other party committed family or dating violence which consists of: (a) intentional use or threat of physical harm; (b) Venue is the county where either applicant or respondent resides; (c) Maximum duration is 2 years, but one year after it is ordered subject can request a determination of whether it is still necessary; (2) Court can order respondent to complete a battering intervention and prevention program; (3) Counsel with a social worker; or (4) perform acts the court determines are appropriate to prevent or reduce the likelihood of family violence in the future; (5) Notice and a hearing is required.

Visitation will be denied when: (1) only upon a showing of danger to the child's physical or emotional health; (2) Upon motion the court can restrict visitation.

Custody order can be modified by: (1) A motion to modify managing conservator filed in SAPCR court; (2) Motion must state that modification would be in best interest of the child and that circumstances have materially and substantially changed; or (3) the child is at least 12 years old and has filed a document with the court indicating who he or she wants to live with; or (4) the custodial parent has voluntarily relinquished the primary care and possession of the child for at least 6 months. A modification cannot be sought within 1 year of a prior determination absent special circumstances.

